

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)	
)	
v.)	No. 05-30046-GAO
)	
EDUARDO PAGAN)	

**SENTENCING MEMORANDUM ON BEHALF OF
EDUARDO PAGAN**

Now comes Eduardo Pagan, through counsel, and files the following Sentencing Memorandum.

(1) PROCEDURAL HISTORY

Defendant Eduardo Pagan appeared before Your Honor on October 17, 2006 and pleaded guilty to Counts 1-5 of the Superseding Indictment.

Counts 1 and 3 charged Possession with Intent to Distribute and Distribution of Cocaine Base in violation of 21 U.S.C. §841(a)(1); Count 2 charged Possession with Intent to Distribute and Distribution of Cocaine Hydrochloride in violation of 21 U.S.C. §(a)(1). Count 4 charged Possession in Intent to Distribute and Distribution of Cocaine Base, in violation of 21 U.S.C. §841(a)(1) and charged that the sale involved five grams or more,

thereby subjecting Defendant to Title 21 U.S.C. §841(b)(1)(B)(iii); Count 5 charged Possession of Ammunition by a Convicted Felon in violation of Title 21 U.S.C. §922(g)(1).

The government filed an Information for Sentence Enhancement for Prior Drug Conviction pursuant to 21 U.S.C. §851(a)(1), seeking sentencing enhancement for Count 4.

Defendant filed an Opposition to the Information and Motion for Pre-Trial Hearing on Government's §851 filing, wherein he challenged the constitutional validity of the prior conviction. A hearing was conducted before Your Honor on August 7, 2006. The court ruled that the government can seek a Sentencing Enhancement for Prior Drug Conviction.

(2) RELEVANT PERSONAL BACKGROUND

Defendant and counsel have reviewed pages 9 through 13 of the Presentence Report titled "Personal and Family Data" and agree with the information contained therein.

Defendant also incorporates letters from his mother (who resides in Puerto Rico) and Xiomara Soto, the mother of Mr. Pagan's 9-year-old son, both of whom live in Cleveland, Ohio.

Mr. Pagan is a non-violent individual who has a history of legitimate employment. He has been a source of strength and support (emotional and financial) for his family and

loved ones. He realizes that he will be separated from those he dearly loves, and knows that because of his actions he has left those who depend upon him to fend for themselves. He truly regrets the consequences of his conduct, especially as it relates to his 9-year-old son and the young daughter of his girlfriend, Suheyrie Hernandez, and knows there is no substitute for a father's love and concern.

(3) MANDATORY SENTENCE

Defendant recognizes that he faces the prospect of a 10-year mandatory minimum sentence, and moves that this Honorable Court reconsider its decision of August 7, 2006. In support thereof, Defendant incorporates by reference Defendant's Memorandum in Support of Opposition to Government's Information.

In the event that Your Honor denies the government's Information for Sentence Enhancement for Prior Drug Conviction, Defendant seeks a sentence within the guideline range of 70 to 87 months, as accurately stated in paragraph 92 of the Presentence Report.

(4) SENTENCING GUIDELINES

If the Defendant does not face a mandatory minimum sentence of 10 years, then Defendant asks this court to impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in the statute at 18 U.S.C. §3553(a)(2) i.e., (A) to

reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to conduct; (C) to protect the public from further crimes of the Defendant; and (D) to provide the Defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner.

A sentence within the guideline range of 70 to 87 months is sufficient, but not greater than necessary, to satisfy the purposes of sentencing. Clearly, the offenses committed by Defendant are serious, deserving of a sentence providing meaningful punishment. A sentence within the guideline range reflects the seriousness of the offense, promotes respect for the law, provides for punishment, and serves as no less a deterrent that higher sentence would.

Defendant is 28 years old. If given a sentence with the guideline range, he will still be young enough upon release to have an opportunity for a productive, law-abiding future, and would be unlikely to reoffend, thereby protecting the public from further crimes.

(5) CONCLUSION

For the foregoing reasons, and reasons previously advanced during the sentence enhancement hearing, Defendant moves that this Honorable Court reconsider its ruling on the §851 sentencing enhancement and sentence Defendant pursuant to the sentencing guidelines previously stated.

Respectfully submitted,
Defendant Eduardo Pagan
By his Attorney

/s/

Robert H. Astor, Esquire
Attorney for Defendant
1441 Main Street, Suite 403
Springfield, MA 01103
(413) 781-1144
(413) 747-8044 FAX
BBO# 023120

June 30, 2006

To Whom it May Concern,

I, Maria Gonzalez can certify the Edwardo Pagan is my son, that he is 27 years old and lived in Guayama P.R. for eighteen years.

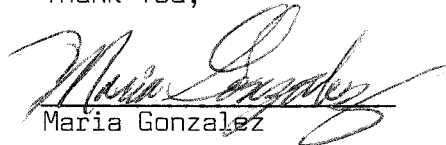
Edwardo Pagan was raised in a family of love and care. Never had any problems with neighbors or family. He was a good student and was not related to any situation that referred to drugs or delinquency.

As I can say Edwardo has been a good son, father and hard worker. I can tell that he is not an aggressive or violent person.

I consider that he should have an opportunity to investigate the charges against him.

As for all, I thank for helping this mother that suffer for her son.

Thank You,


Maria Gonzalez

July 5, 2006

XIOMARA SOTO
3462 West 47th. Street
Cleveland, OH 44102

Your Honor,

I am writing regarding Edwardo Pagan. I have known Edwardo for over 10 years. He has always been a good person and father. Our relationship is strong and we stay in touch. I was very surprised to hear that he was in any kind of trouble because for the past 4 years he has help support both myself and his 9 year old son, Edwardo

He has always been a good role model for his son. He has never exposed his son to any type of bad behavior. His son, has been suffering from depression for over a year, since his father has been away. His school work is declining and he is constantly worried about where his dad is and what is going to happen to him. When Edwardo was home he always took the time to spend with his son. During school vacation, Edwardo takes him for a full month or more and spends quality time with him.

I relied heavily on the financial support that Edwardo supplied. Now that he is gone, I no longer can. I was recently laid off and the financial burden is overwhelming without Edwardo. His son and I need him home. I wish there was something I could do. I feel so helpless.

Please, your Honor, have mercy on Edwardo. What happens to him affects many loved ones that are suffering. I feel in my heart that he is innocent.

Sincerely,

Xiomara Soto
Xiomara Soto